

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN ROBERT KENNEDY,

Defendant.

Case No. 11-20421

Honorable John Corbett O'Meara

ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL

This matter came before the court on defendant John Robert Kennedy's February 25, 2013 Amended Motion for New Trial. The government filed a response March 12, 2013; and Defendant filed a reply March 19, 2013. No oral argument was heard.

On November 28, 2012, a jury found defendant Kennedy guilty on the three remaining counts of the indictment involving possessing and manufacturing a destructive device. In his motion for new trial, Kennedy again claims that the jury was improperly instructed on whether the device qualified as a "destructive device" within the meaning of 26 U.S.C. § 5845(f)(1) and 18 U.S.C. § 921(a)(4)(A).

First, Kennedy asserts that the court should have included in the jury instructions an affirmative defense instruction regarding whether he designed the charged device as a weapon. The court denied Kennedy's request on the record, stating that the jury was aware that that was his defense in the case and that there was no need for it in the jury instructions.

Second, Kennedy contends that in the jury instructions the court's definition of "destructive device" was inconsistent. Defendant claims that the court's refusal to modify the instruction on page 29 denied him due process.

An improper instruction requires reversal of the judgment "only if the instructions, viewed as a whole, were confusing, misleading, or prejudicial." United States v. Kuehne, 547 F.3d 667, 679 (6th Cir. 2008). Although the second instruction that gave a definition for a destructive device omitted the language requiring that the device be designed or redesigned as a weapon, the jury instructions, viewed as a whole, adequately informed the jury what was required to be found in finding the defendant guilty of the charge. Moreover, the court specifically indicated to the jury that the definition of "destructive device" had been previously given to them and to read it again would "simply be a repetition." Trial trans., 11/28/12/ at 837.

ORDER

It is hereby **ORDERED** that defendant John Robert Kennedy's February 25, 2013 Amended Motion for New Trial is **DENIED**.

s/John Corbett O'Meara
United States District Judge

Date: April 17, 2013

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, April 17, 2013, using the ECF system.

s/William Barkholz
Case Manager